

**REMARKS**

Claims 1, 6, 10, 11, and 19-22 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,640,395 to Hamalainen et al. (hereafter "the '395 Patent"). Claims 7, 8 and 23, 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '395 Patent in further view of U.S. Patent No. 6,049,549 to Ganz et al. (hereafter "the '549 Patent"). Claims 9, 12-18 and 26-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '395 Patent. Finally, claims 1-18 were rejected under 35 U.S.C. §112, first paragraph, as being indefinite because they were based on a single means claim.

Applicants respectfully disagree and request withdrawal of these rejections for the reasons given below.

**The Section 112 Rejections**

Claims 1-18 were rejected under 35 U.S.C. §112, first paragraph, as being indefinite because they are based on a single means claim. Applicants respectfully disagree. None of the claims contain single means claims. None of them are in means-plus-function language nor can they be interpreted as being in means-plus-function language. In addition, Applicants know of no caselaw which prevents a claim consisting of a single element from being patentable provided the single element is novel, is not anticipated by prior art, and is not obvious in view of the prior art. Accordingly, Applicants respectfully request withdrawal of this rejection.

Notwithstanding the above, Applicants have amended the independent claims to include more than a single element to more particularly point and distinctly claim the present invention.

**The Section 102(e) Rejections**

Independent claims 1 and 19 and certain dependent claims were rejected under 35 U.S.C. §102(e) as being unpatentable over the '395 Patent. These claims are directed at methods and devices for scheduling transmissions in an interference-limited network (e.g., a wireless network) by sending transmission test signals to one or more terminal units (e.g., wireless devices) and then by prioritizing transmission request signals from the one or more terminal units based on achievable data rates, where each achievable data rate is associated with one of the test signals. As the Office Action admits, the '395 Patent does not disclose such test signals. The Office Action points out that the '395 Patent does disclose data signals and refers to column 9, lines 9-67 of the '395 Patent. Upon reading this portion of the '395 Patent and other portions, there is no disclosure, teaching or suggestion of the test signals as in independent claims 1 and 19, and their dependent claims, of the present invention. In contrast, the data signals disclosed in the '395 Patent are not test signals, and are not even sent to a terminal. Instead, these signals are sent from a terminal.

In sum, because the '395 Patent does not teach or disclose each and every element of independent claims 1 and 19 and their dependent claims, the

'395 Patent cannot anticipate these claims. Applicants respectfully request withdrawal of these rejections and allowance of independent claims 1 and 19 and their dependent claims.

**The Section 103 Rejections**

Claims 9, 12-18 and 26-32 were rejected based on 35 U.S.C. §103(a) as being unpatentable over the '395 Patent. Because the so-rejected claims depend upon allowable independent claims, these dependent claims are also allowable for the reasons presented above.

Further, there is no suggestion in the '395 Patent that the data signals disclosed therein could be used as test signals which are sent to a terminal, as claimed in the present invention. Quite the contrary, the data signals in the '395 Patent are being sent from a terminal to a base station. In addition, the signals being sent by the terminals in the '395 Patent are not test signals, rather they are information data signals. In sum, the '395 Patent does not suggest to one of ordinary skill in the art a device for scheduling transmissions in an interference-limited network by sending transmission test signals to one or more terminal units and prioritizing either transmission request signals or test signals based on achievable data rates wherein each rate is associated with one of the test signals as in claims 9, 12-18, 26-33 of the present invention.

Applicants respectfully request withdrawal of these rejections and allowance of the indicated claims.

Claims 7 and 8, and 23-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '395 Patent in view of the '549 Patent. Because the so-rejected claims depend upon allowable independent claims, these dependent claims are also allowable for the reasons presented above. Further, neither the '395 Patent nor the '549 Patent taken together, or in combination, discloses, teaches or suggests a device for scheduling transmissions in an interference-limited network by sending transmission test signals to one or more terminal units, prioritizing transmission request signals from the one or more terminal units based on achievable data rates wherein each rate is associated with one of the test signals and periodically polling a data rate associated with one of the terminal units, as in claims 7, 8 and 23-25 of the present invention.

Accordingly, Applicants respectfully request withdrawal of these rejections and allowance of the indicated claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number of the undersigned below.

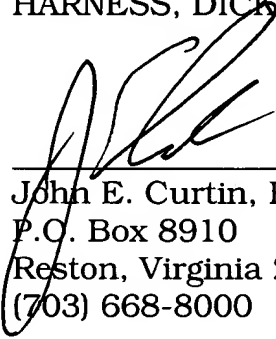
In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



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